IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

OTC.No. 5 of 2007()

AITA. 6/1999 of AGRL.INCOME TAX APPELLATE TRIBUNAL, ADDL.BENCH,KOTTAYAM

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PETITIONERS/APPELLANT AND LEGAL REPRESENTATIVES/ASSESSEE AND LEGAL REPRESENTIVES :

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1. THOMMY VARGHESE (DIED)
KALAPURACKAL, KOOTTIPARAMBIL,
VAIKOM, DIST.KOTTAYAM.

2. K.V.THOMAS, S/O.LATE THOMMY VARGHESE,
KALAPURACKAL,KOOTTIPARAMBIL, VAIKOM,
DIST.KOTTAYAM.

3. K.V.MATHEW,
S/O.LATE THOMMY VARGHESE,
KALAPURACKAL,KOOTTIPARAMBIL,
VAIKOM, DIST.KOTTAYAM

BY ADV. SRI.K.REGHU KOTTAPPURAM

RESPONDENT/RESPONDENT/REVENUE

STATE OF KERALA PREPRESENTED BY
THE CHIEF SECRETARY TO GOVT.,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SHRI MOHAMMED RAFIQ.

THIS OTHER TAX CASE HAVING COME UP FOR ADMISSION ON 11/07/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.T.C. No. 5 OF 2007

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Dated this the 11th July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This appeal arises out of the order passed by the Kerala Agricultural Income Tax Appellate Tribunal, Kottayam in Agricultural Income Tax Appeal, AITA No. 6 of 1999 dated 30th December, 2005.

2. Brief facts are:- This appeal is filed under the provisions of the Kerala Agricultural Income Tax Act, 1991 (for the sake of brevity, hereinafter referred to as 'Act'). The assessment year in question is 1991-92. The appellants/petitioners before us in this appeal are the legal representatives of late Thommy Varghese. He was in possession and enjoyment of an agricultural land to an extent of 7.99 acres. While he was alive, he did not file any returns under the provisions of the Act. Therefore, the assessing authority had issued the proposition notice, inter alia directing the assessee to file his returns for the assessment year in question. The assessee had filed his objections to the said notice inter alia contending that his agricultural holding is less than 3 hectares and, therefore, he would not come within the purview of the Act. The assessing authority, after considering the objections so filed by the assessee-late Thommy Varghese, has proceeded to complete the assessment under the Act for the assessment year 1991-92. The orders passed by the assessing authority was the subject matter of the first appeal. The first appellate authority has rejected the appeal and thereby has confirmed the orders passed by the assessing authority. Disturbed by the aforesaid orders , the assessee had carried the matter in an appeal before the Kerala Agricultural Income Tax Appellate Tribunal in AITA No.

6 of 1999. The Tribunal has rejected the appeal, by its order dated 30th December, 2005. That is how, the assessee is before us in this appeal.

3. The following questions of law are raised in this appeal. They are as under:

> *"(a) The learned Tribunal ought to have appreciated in the light of definition of agricultural income under Section 2(1) of Kerala Agricultural Income Tax Act 1991 that the extent of 80 cents of paddy fields was to be excluded from the total extent of land in order to decide the slab of extent of 3 hectares for bringing the case under the purview of Agricultural Income Tax Act 1991.*
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> *(b) The learned Tribunal ought to have followed the definition of agricultural income for the purpose of deciding the slab as 3 hectares instead of interpreting wrongly that the income from paddy field is to be excluded for the purpose of assessing the agricultural income.*
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> *(c) Is it proper to ignore the extent of more than 1 acre of land which was covered and occupied by residential houses, out houses, car shed, fire wood shed etc referred to in the inspection note dated 04.08.1981 issued by the inspecting officers of department, which was to be deducted from the total extent of 7.10 acres of land after deducting 80 cents of paddy fields again in the light of the definition of agricultural income under section 2(1) of the above Act.*
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> *(d) The learned Tribunal has not disclosed the logic behind exclusion of income from paddy field for assessment of agriculture income and including the extent of paddy field for deciding the slab extent of 3 hectares for bringing the case under the purview of Agricultural Income Tax Act for assessment of agricultural income tax."*

4. Learned counsel appearing for the assessee would contend that since the holding of the appellants is less than 3 hectares of land, the agricultural

income derived from the land is not exigible to tax under the provisions of the Act. In support of his contention, the learned counsel informs us that the assessee owns 7.19 acres of land and other 80 cents of land is purely a paddy field and that 80 cents of land cannot be included in 7.19 acres of land for the purpose of computing the tax payable under the Act. In aid of his submission, the learned counsel relies upon the charging provisions as well as the machinery provisions under the Act. For appreciating the stand taken by the learned counsel for the appellant, it would be useful to extract the charging provisions as well as the machinery provisions under the Act. Section 3 of the Act is the charging provision under the Act. The said Section is as under:

> *"3. Charge of Agricultural Income Tax:-(1) Tax at the rate or rates specified in the Schedule to this Act shall be charged for each assessment year in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person.*
>
> *Provided that no tax is payable by any person other than a company or a firm where the total extent of landed properties, the agricultural income from which is assessable at his hands under the provisions of this Act do not exceed three hectares."*

Section 3 is the charging Section. It seeks to levy charge of Agricultural income tax at the rate or rates specified in the Schedule to the Act for each assessment year, subject to the provisions of the Act on the total Agricultural income of the previous year of every person. The charging Section provides for the character of the imposition known by its nature which prescribes the taxable event attracting levy, the person whom the levy is imposed, who is obliged to pay tax, the rate at which the tax is imposed and the value or measure to which the rate is applied for computing the tax liability. The proviso appended to the Section excludes certain

category of persons from the purview of the Act and that includes a person holding lands less than three hectares.

5. Section 4 of the Act is a machinery provision, which reads as under:

"4. Total Agricultural Income:-(1) Subject to the provisions of this Act, the total Agricultural income of the previous year of any person comprises of all agricultural income derived from land situated within the State and received by him within or outside the State, but does not include:-

(a) any agricultural income derived from land situated outside the State;

(b) any agricultural income derived by cultivation of paddy, tapioca , plantain, ginger, ragi, pulses, sesamum, vegetable, sweet potato, tubers, sugarcane, jack, mango, pineapple, orchid or other flowers, vanila, turmeric and gauva.

(c) Share income received by a partner from any firm on which tax has been paid by the firm.

(2) The following income shall be deemed to be agricultural income received in the previous year, namely:-

(i) any amount received in the previous year from the Indian Coffee Board in respect of Coffee delivered in any year for sale in pool auction, excluding any amount on which tax was levied in any previous year;

(ii) When an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or liability incurred by the assessee, and where the assessee has obtained, either in cash or in any other manner any amount in respect of such loss, expenditure or some benefit in respect of such liability during the previous year the amount obtained by him, or the value of benefit accrued to him;

(iii) any amount received in the previous year in respect of bad debts written off in any previous year regarding which deduction under clause (j) of section 5 has been allowed. "

6. Section 4 of the Act provides the procedure for computation of tax and the procedure for imposing the liability on the tax payer. It comprises the provisions relating to the subject matter of taxation, rate of tax, basis at which the quantum of tax is to be arrived at, the exemptions to be granted etc. Section 4 of the Act provides for total Agricultural income which can be brought to tax under the Act. For the purpose of the computation of total Agricultural income of the previous year of any person all agricultural income derived from land situated within the State and received by him within or outside the State requires to be taken. The Legislature, in the provision itself, has excluded certain Agricultural income, such as, any Agricultural income derived from land situated outside the State and any agricultural income derived by cultivation of paddy, tapioca etc. In a particular piece of land several types of crops could be raised. Income from such crops may be exempt from tax. That does not mean that the extent of land is to be excluded from the area for the purpose of charging provision. The scheme of the Act does not provide for finding out such extent of land and to exclude it from the total extent. The scheme is only to exempt income from certain types of crops.

7. Now coming to the contention of the learned counsel for assessee that 80 cents of land is used for the purpose of paddy cultivation and, therefore, the same requires to be excluded, and if it is done, the charging provision is not attracted and the Agricultural income of the appellant will not come within the net of taxation under Agricultural Income Tax Act. This submission of the learned counsel is contrary to what we have said earlier while interpreting the charging provision.

8. Section 4 of the Act provides for computation of agricultural income .

Under the said provision, certain agricultural income are required to be excluded for the purpose of arriving at the total agricultural income of a person. In our opinion, it is needless to say that Sections 3 and 4 of the Act are two independent provisions, one is a charging provision and the other is a machinery provision. The charging Section provides for the imposition of tax. The machinery Section deals with the procedure for quantification of the tax and for its collection. The charging and the computation provisions together constitute an integrated fiscal code. If there is a case to which the computation provision cannot apply at all, then, it cannot fall within the charging Section. In the instant case, since the holding of the assessee is more than 3 hectares of land, which includes 80 cents of land which is used for the purpose of paddy cultivation, in our opinion, all the authorities under the Act as well as the Agricultural Income Tax Appellate Tribunal is justified in rejecting the claim of the assessee.

9. In that view of the matter, the questions of law raised by the assessee require to be answered in negative and in favour of the Revenue.

10. I.A.No.1626 of 2007 is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK